

1507 - 21st Street, Suite 330
Sacramento, California 95814
Telephone: (916) 445-1888
Contact Person: Kathy Tomono
www.nmvb.ca.gov

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board ("Board") held a General meeting on January 31, 2007, at the Hilton Los Angeles Airport, Newport B Room, 5711 West Century Boulevard, Los Angeles, California.

2. **ROLL CALL**

David W. Wilson, President of the Board, called the General meeting to order at 9:55 a.m.

Present:	Robert V. Branzuela	William G. Brennan, Executive Director
	Robert T. (Tom) Flesh	Howard Weinberg, General Counsel
	David C. Lizárraga	Robin P. Parker, Senior Staff Counsel
	(Left meeting at 11:55 a.m.)	
	Alan J. Skobin	
	Glenn E. Stevens	
	David W. Wilson	

Absent: Ryan L. Brooks

3. **APPROVAL OF THE MINUTES FROM THE DECEMBER 13, 2006, GENERAL MEETING**

Mr. Stevens moved to adopt the December 13, 2006, General Board meeting minutes. Mr. Wilson seconded the motion. The motion carried unanimously.

4. **PUBLIC COMMENT ON MATTERS NOT ON THE AGENDA FOR PURPOSES OF DISCUSSING WHETHER SOMETHING SHOULD BE AN AGENDA ITEM AT A FUTURE BOARD MEETING (GOVERNMENT CODE § 11125.7(A))**

This matter was postponed while the members considered agenda items 7-9.

5. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO HAIG PAPAIA, FORMER PUBLIC BOARD MEMBER**

This matter was postponed while the members considered agenda items 7-9.

6. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO ANDY ROBLES, FORMER DEALER BOARD MEMBER**

This matter was postponed while the members considered agenda items 7-9.

7. **ORAL ARGUMENTS BEFORE THE PUBLIC AND DEALER MEMBERS OF THE BOARD**

MEGA RV CORP., dba McMAHON'S RV v. WESTERN RECREATIONAL VEHICLES, INC.

Protest No. PR-1983-05

Oral arguments were presented before the Public and Dealer members of the Board. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving, represented Protestant. Jim Berg, Esq., of Larson Berg & Perkins, PLLC, represented Respondent.

8. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

CONSIDERATION OF FINDINGS AFTER REMAND: PROPOSED ORDER

MEGA RV CORP., dba McMAHON'S RV v. WESTERN RECREATIONAL VEHICLES, INC.

Protest No. PR-1983-05

Consideration of the Administrative Law Judge's "Findings after Remand: Proposed Order", by the Public and Dealer members of the Board.

The Public and Dealer members of the Board deliberated in closed Executive Session. Mr. Flesh moved to adopt the Proposed Order subject to the language in footnote 51, lines 25-28 being stricken. Mr. Lizárraga seconded the motion. The motion carried unanimously.

9. **OPEN SESSION**

The Public and Dealer members returned to Open Session. Ms. Parker announced the Board's decision in McMahon's RV.

20. **2007 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

This matter was taken out of order to accommodate the travel schedule of Mr. Lizárraga.

Mr. Flesh moved to nominate Alan J. Skobin as President. Mr. Flesh moved to close the nominations, with Mr. Stevens seconding the motion. This motion carried unanimously. Mr. Wilson seconded the motion to nominate Mr. Skobin as President. The motion carried unanimously.

Mr. Skobin moved to nominate Tom Flesh as Vice President. Mr. Stevens moved to close the nominations, with Mr. Skobin seconding the motion. This motion carried unanimously. Mr. Stevens seconded the motion to nominate Tom Flesh as Vice President. The motion carried unanimously.

21. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE, BY THE INCOMING BOARD PRESIDENT**

After a brief discussion, it was determined that the existing committees would be temporarily retained with the exception of the Executive Committee until the next Board meeting. The Executive Committee was now comprised of Alan Skobin, President, and Tom Flesh, Vice President. This topic would be agendized for the March 28, 2007, meeting.

4. **PUBLIC COMMENT ON MATTERS NOT ON THE AGENDA FOR PURPOSES OF DISCUSSING WHETHER SOMETHING SHOULD BE AN AGENDA ITEM AT A FUTURE BOARD MEETING (GOVERNMENT CODE § 11125.7(A))**

Mr. Wilson invited public comment on matters not on the agenda for purposes of discussing whether something should be an agenda item at a future Board meeting. There were no public comments made.

5. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO HAIG PAPAIA, FORMER PUBLIC BOARD MEMBER**

Mr. Flesh moved to present a Resolution to Haig Papaian, former Public Board member, in recognition of his contribution to the New Motor Vehicle Board. Mr. Lizárraga seconded the motion. The motion carried unanimously. (The Resolution is scheduled to be presented at the June 6, 2007, General meeting, in Southern California.)

6. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO ANDY ROBLES, FORMER DEALER BOARD MEMBER**

Mr. Stevens moved to present a Resolution to Andy Robles, former Dealer Board member,

in recognition of his contribution to the New Motor Vehicle Board. Mr. Wilson seconded the motion. The motion carried unanimously. (The Resolution is scheduled to be presented at the June 6, 2007, General meeting, in Southern California.)

10. **ANNUAL UPDATE ON BOARD CONSUMER MEDIATION PROGRAM - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Heather Collins. Mr. Brennan reported that the program continues to be successful with 438 cases in fiscal year 2005-2006. Out of the 438 cases, 296 cases were mediated with over 65% of those cases being successfully mediated. Mr. Brennan noted a high participation response by dealers and manufacturers. Lastly, Mr. Brennan indicated that the staff was in the process of a performance improvement evaluation of this program. A survey was being developed to survey dealers and manufacturers concerning their level of satisfaction with the program.

11. **CONSIDERATION OF THE REVISED GUIDE TO THE NEW MOTOR VEHICLE BOARD TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum and revised *Guide to the New Motor Vehicle Board* from Bill Brennan and Howard Weinberg. Mr. Weinberg summarized the changes to the Guide and updated the codes to reflect statutory changes effective January 1, 2007. Mr. Lizárraga moved to adopt the Guide. Mr. Flesh seconded the motion. The motion carried unanimously.

12. **ANNUAL REPORT CONCERNING OUT-OF-STATE TRAVEL PLANS FOR THE 2007-2008 FISCAL YEAR - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning out-of-state travel plans for fiscal year 2007-2008. Mr. Brennan reported that the staff was prepared to submit travel proposals for 10 trips. Seven of the trip requests are for the Board Members, the Executive Director, and the Staff Manager to attend the National Association of Motor Vehicle Boards and Commissions Fall Workshop in Portland, Maine in October 2007. The remaining three trips are for two Board Members and the Executive Director to attend the Recreation Vehicle Industry Associations 45th Annual National RV Trade Show in Louisville, Kentucky in November 2007. Mr. Flesh moved to adopt the out-of-state travel plans for fiscal year 2007-2008. Mr. Lizárraga seconded the motion. The motion carried unanimously.

13. **CONSIDERATION OF 2007 REVISIONS TO THE INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS WHICH OUTLINES THEIR OBLIGATIONS TO PROVIDE NOTICES, SCHEDULES, AND FORMULAS MANDATED BY THE CALIFORNIA VEHICLE CODE AND CIVIL CODE TO THE NEW MOTOR VEHICLE BOARD AND/OR IMPACTED DEALERS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and revised *Informational Guide for Manufacturers and Distributors*. Ms. Parker reported that the Guide was minimally revised. The title page was updated to reflect the Acting BTH Secretary Barry R. Sedlik, the expiration of Messrs. Papaian and Robles' terms, and the addition of Polly Riggensbach to the Board's legal staff. The OL 124 Form on page 9 was updated as was the contact information for Occupational licensing on page 10. The section on page 11 entitled "Can a Dealer Waive its Protest Rights?" was deleted in light of the recent decision in *DaimlerChrysler Motors Co. v. Lew Williams, Inc.* (2006) 142 Cal. App. 4th 344; 48 Cal. Rptr. 3d 233. Mr. Flesh moved to adopt the revised Guide. Mr. Stevens seconded the motion. The motion carried unanimously.

14. **DISCUSSION AND CONSIDERATION OF THE BOARD POLICY THAT DEALER BOARD MEMBERS VOLUNTARILY RECUSE THEMSELVES FROM ARTICLE 5 RECREATIONAL VEHICLE PROTESTS (VEH. CODE §§ 3070, 3072, 3074, 3075, AND 3076) - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning the Board policy that Dealer Board Members voluntarily recuse themselves from Article 5 recreational vehicle protests. Mr. Weinberg reported that he reexamined the Board policy of global Board Dealer Member recusal from RV protests. He concluded that there was no legal reason why the Board Dealer Members must recuse themselves from RV protests. Mr. Flesh moved to adopt the committee recommendation that "Dealer members of the Board participate in, hear, comment, or advise other members upon, or decide protests between RV dealers and franchisors, unless a Dealer member or members also has an interest in an RV dealership in which case the committee recommends that the dealer member recuses himself or herself from participation in the matter, unless the parties agree to such participation." Mr. Stevens seconded the motion. The motion carried unanimously.

15. **CONSIDERATION OF DRAFT WAIVER OF THE BOARD POLICY THAT DEALER BOARD MEMBERS VOLUNTARILY RECUSE THEMSELVES FROM ARTICLE 5 RECREATIONAL VEHICLE PROTESTS (VEH. CODE §§ 3070, 3072, 3074, 3075, AND 3076) - POLICY AND PROCEDURE COMMITTEE**

Mr. Wilson indicated that this matter had been taken off today's agenda.

16. **ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the annual review of Board adopted policies. The new policies that were approved in 2006 are as follows:

- The Board appointed Diana Woodward Hagle as a new Administrative Law Judge. Polly Riggensbach, Staff Counsel, was appointed a Mandatory Settlement Conference Administrative Law Judge;

- Administrative Law Judges Hagle and Taylor were added to the Merits and MSC assignment logs. Judge Wong was added to the MSC assignment log, and upon completion of her training Judge Riggerbach will also be added;
- The Board staff will prepare only one version of proposed decisions, rulings, and orders that contains citations to the record. Additionally, the following sentence will be included in all Board issued proposed decisions, rulings, and orders: “The references to testimony, exhibits, or other parts of the record contained herein are examples of the evidence relied upon to reach a finding, and are not intended to be all-inclusive”;
- The legal staff can accept, subject to stipulation of the parties, the offer to use litigants’ conference rooms or offices for purposes of conducting a Mandatory Settlement Conference so long as all of the requirements of Section 18944.2 of Title 2 of the California Code of Regulations are met;
- All fees for document requests that total \$10.00 or less (less than 40 pages and less than 15 minutes of actual labor) will be waived by the Board, subject to review and approval by the Executive Director;
- At least annually, the Solon C. Soteras Employee Recognition Award will be given out and based on merit; and,
- There will be no charge for document requests sent via facsimile. However, if an individual required an excessive number of documents be sent via fax, then he or she could be referred to an attorney support service.

17. **DISCUSSION AND CONSIDERATION OF THE BOARD’S COLLECTION OF THE DEPARTMENT OF CONSUMER AFFAIRS, ARBITRATION CERTIFICATION PROGRAM’S FEES, THE ASSOCIATED BOARD COSTS, AND WHAT ACTION TO TAKE FOR MANUFACTURERS AND DISTRIBUTORS WHO ARE ASSESSED NOMINAL FEES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning the Board’s collection of the Department of Consumer Affairs (“DCA”), Arbitration Certification Program’s fees, the associated Board costs, and what action to take for manufacturers and distributors who are assessed nominal fees. Mr. Weinberg reported that at the December 13, 2006, General meeting, the members requested more data and background information concerning the fee collection for DCA. The members were provided with this detailed information. After a discussion, Mr. Wilson moved to adopt the DCA’s proposal that the Board exercise its discretion to collect or not collect fees when the amount to be collected is nominal, and to provide DCA with an accounting of the manufacturers and the amounts owed but not collected as a result of the Board exercising its discretion. Mr. Skobin seconded the motion. The motion carried unanimously.

18. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
 - (1) Status of Protests.
 - (2) Status of Petitions.
 - (3) Status of Appeals.
 - (4) Matters Resolved.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

Mr. Brennan provided the members with a Report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. Mr. Brennan highlighted the upcoming Industry Roundtable. Additionally, he reported that the staff was investigating the feasibility of providing Board meeting materials electronically, and also whether the DMV could issue a probationary occupational license for failure of a licensee to timely pay the Board fees. These items would be addressed at upcoming meetings.

The members were also provided with a summary of case management. Ms. Parker indicated that there had been one new protest filed since the report was drafted. Additionally, there had been 21 new protests since November 17, 2006, and a total of 49 protests for 2006. For 2007, there had been two new recreational vehicle protests. Ms. Parker indicated that case management was quite busy.

Mr. Weinberg reported on the status of the pending court cases. Mr. Weinberg updated the members on the status of the *Frontier Infiniti* writ wherein Protestant alleged the Board abused its authority to award attorney's fees. No dates have been set in the *Serpa Volkswagen* writ in Tulare County. In the *Thompson's Auto and Truck Center* writ, the matter was dismissed with prejudice. In the *49er Sierra Resources v. Subaru* case, Mr. Weinberg reported that the superior court denial of the writ was appealed. Lastly, Mr. Weinberg indicated that there had been no activity on the two *Fladeboe* cases.

19. **SELECTION OF BOARD MEETING DATES FOR 2007**

After a brief discussion off the record, the members selected June 6, 2007, in Los Angeles/Orange County area for an upcoming meeting date. The remaining dates for 2007 would be selected at the March 28, 2007, General Meeting.

22. **DISCUSSION CONCERNING AGENDA ITEMS FOR FUTURE BOARD MEETINGS**

This item gave the members an opportunity to discuss agenda items for future Board meetings. Mr. Skobin requested that the proposed regulatory language defining the term "franchisor incentive program" be agendaized. Mr. Wilson requested that Mary Garcia from Occupational Licensing discuss the OL-124 forms and the licensing of the RV industry.

23. **ADJOURNMENT**

Mr. Flesh moved to adjourn the meeting. Mr. Stevens seconded the motion. The motion carried unanimously. With no further business to discuss, the meeting was adjourned at approximately 12:53 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

APPROVED: _____

Alan J. Skobin
President
New Motor Vehicle Board